

## **EXHIBIT 4**

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
ALEXANDRIA DIVISION

ePLUS, INC.,	.	Case No. 1:04CV612
	.	
Plaintiff,	.	
	.	
vs.	.	Alexandria, Virginia
	.	January 26, 2005
ARIBA, INC.,	.	9:30 a.m.
	.	
Defendant.	.	MORNING SESSION
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TRANSCRIPT OF JURY TRIAL  
BEFORE THE HONORABLE LEONIE M. BRINKEMA  
UNITED STATES DISTRICT JUDGE  
VOLUME III

APPEARANCES:

FOR THE PLAINTIFF:

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(Pages 386 - 514)  
COMPUTERIZED TRANSCRIPTION OF STENOGRAPHIC NOTES

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1 Q. Did you look at these patents through the viewpoint of a  
 2 person of ordinary skill in the art in the 1993-'94 time frame?  
 3 A. Yes. That's what I'm required to do.  
 4 Q. Okay. And what is that level of technical skill in your  
 5 opinion of somebody who would be able to understand and ascertain  
 6 the meaning of these patents and, I think you said, enable such a  
 7 system?  
 8 MR. LAVELLE: Same objection, Your Honor.  
 9 THE COURT: Well, that's a little bit different. This  
 10 expert is opining about several issues, one of which is he's going  
 11 to have to opine about the state of the art in the '93-'94 time  
 12 period.  
 13 And I assume you were in '93 and '94 still a Ph.D.?  
 14 When did you get your doctorate?  
 15 THE WITNESS: 1976.  
 16 THE COURT: All right. Were you an academic or in  
 17 industry?  
 18 THE WITNESS: I've been academic since then.  
 19 THE COURT: All right. And teaching basically the same  
 20 types of courses you're teaching now.  
 21 THE WITNESS: Yeah, networks, e-commerce.  
 22 THE COURT: Would you consider yourself in the 1993 time  
 23 a person -- an ordinarily professional skilled person in the art  
 24 at that time?  
 25 THE WITNESS: No, I was an expert then.

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1 THE COURT: That's fine. Let's go on.  
 2 BY MR. ROBERTSON:  
 3 Q. Defendants have an expert, Dr. Jeffay, who's going to  
 4 testify. Does he agree or disagree with your view as to that  
 5 level of technical skill in the art?  
 6 MR. LAVELLE: Objection, Your Honor.  
 7 THE COURT: I don't think that's a proper question, not  
 8 at this point anyway, so I'll sustain the objection. But what  
 9 this witness has said is that he would have been qualified -- and  
 10 I agree with that -- as a person ordinarily skilled in the art at  
 11 that point. So let's get right to his evaluations.  
 12 BY MR. ROBERTSON:  
 13 Q. Okay. In preparing to provide the opinions you're going to  
 14 give today, Dr. Weaver, can you tell us, have you had an occasion  
 15 to review deposition testimony and documents in this case?  
 16 A. Yes. I've got about seven boxes of documents that I've  
 17 reviewed.  
 18 Q. Okay. Have you reviewed the depositions of the three  
 19 inventors: Mr. Johnson, Mr. Kinross, and Mr. Momyer?  
 20 A. Yes.  
 21 Q. And have you reviewed the depositions of Ariba's chief  
 22 technical officer, Mr. Federighi?  
 23 A. Yes.  
 24 Q. And would your answer be the same for Ms. Leigh Anne Glasson,  
 25 Ariba's senior director of procurement engineering?

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1 A. Yes.  
 2 Q. And Geoffrey Peddle, Ariba's technical lead?  
 3 A. Yes.  
 4 Q. And how about Mr. Melvin, Ariba's director of Ariba Solutions  
 5 Delivery?  
 6 A. Yes.  
 7 Q. And Mr. Singh, Ariba's vice president of finance?  
 8 A. Yes.  
 9 Q. And Mr. Unkeless, Ariba's vice president of solutions  
 10 marketing?  
 11 A. Yes. We heard from him yesterday.  
 12 Q. Okay. And have you had the opportunity to review the  
 13 depositions of any customers of the Ariba Buyer System?  
 14 A. Yes, Debra Hay from AMS out in Fairfax.  
 15 Q. And did you attend any demonstrations, any on-site  
 16 demonstrations of the Ariba Buyer System?  
 17 A. Yes. That was at MCI, and the demonstration by Anne Whooten.  
 18 Q. And have you reviewed any technical manuals produced by Ariba  
 19 in this case?  
 20 A. Tons of them.  
 21 Q. Okay. Let me just name a few and see if I mention any that  
 22 you didn't review. How about the Ariba Buyer Procurement Guide?  
 23 A. Yes, I've reviewed that.  
 24 Q. The Ariba Buyer Catalog Guide?  
 25 A. Yes.

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1 Q. Did you review the Ariba Buyer Data Load Guide?  
 2 A. Yes.  
 3 Q. Did you review the Ariba cXML Solutions Guide?  
 4 A. Yes, indeed. That's a hard one, but we're going to see that.  
 5 MR. ROBERTSON: Okay. I guess I'll circle back on what  
 6 a cXML is, Your Honor --  
 7 THE COURT: Thank you.  
 8 MR. ROBERTSON: -- because I know that's going to be an  
 9 issue, but I'd like to move forward.  
 10 Q. Did you review the Ariba PunchOut Implementation Guide?  
 11 A. Yes.  
 12 Q. And are we going to hear more about what this PunchOut  
 13 capability is?  
 14 A. We will see some demonstrations, and we will look in the  
 15 Ariba documentation.  
 16 Q. Did you review the Ariba Buyer 8.0 Delta Guide?  
 17 A. Yes.  
 18 Q. The Catalog Format Reference?  
 19 A. Yes.  
 20 Q. All right. Have you had an opportunity to actually use the  
 21 Ariba Buyer software?  
 22 A. Yes, I have.  
 23 Q. And did you have an opportunity to review any what are called  
 24 responses to RFPs that are request for proposals that when a  
 25 customer asks Ariba what's the technical features and

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1 functionality of your software, can you tell us what it does, have  
2 you reviewed those?

3 MR. LAVELLE: Objection, Your Honor. He's testifying.

4 THE COURT: Sustained.

5 BY MR. ROBERTSON:

6 Q. Have you reviewed responses to RFPs?

7 A. Yes. Toro, Anderson, and Selectron.

8 Q. How about computer source code and functional specifications  
9 for the system?

10 A. Yes.

11 Q. And have you had an opportunity to review the reports of  
12 Ariba's technical witnesses?

13 A. Yes.

14 Q. Have you reviewed any declarations given by Ariba's chief  
15 technical officer submitted to this Court with respect to the  
16 functionality of the Ariba Buyer System?

17 A. Yes. That's Mr. Federighi.

18 Q. Okay. Did you take into account Mr. Federighi's statement  
19 that Ariba Buyer is an electronic procurement software product  
20 that allows a company to automate purchasing of products from  
21 various suppliers?

22 MR. LAVELLE: Your Honor, with all due respect, could  
23 the witness testify instead of the lawyer?

24 THE COURT: Counsel, you're leading, so sustained.

25 MR. ROBERTSON: All right.

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1 this was being done for at this point.

2 Now, because -- if you're willing to let Mr. Robertson  
3 lead so we can just get this foundation done and then get to the  
4 substance, that would be fine.

5 MR. LAVELLE: Very good, Your Honor. Thank you.

6 THE COURT: All right, let's start leading again,  
7 Mr. Robertson. Let's get the foundation done, and then we'll get  
8 to the substance.

9 MR. ROBERTSON: Thank you.

10 Q. I just want to know did you rely on this declaration in  
11 forming your opinions that you're going to be offering today?

12 A. Yes, I did.

13 MR. ROBERTSON: Okay. And I'd like to get into some of  
14 the specific statements that Mr. Federighi made, Your Honor, in  
15 his declaration under oath.

16 THE COURT: All right. Well, that's not hearsay. Any  
17 expert can say to the jury, I looked at so-and-so's statement. He  
18 said such-and-such.

19 Now, whether what he said is true or not we don't know  
20 because that witness is not in front of us right now. We're  
21 looking at the statement solely to understand the bases upon which  
22 Dr. Weaver came to his conclusions. In other words, we're now  
23 looking at what did this expert have, what information did he have  
24 upon which he is basing his opinions. All right.

25 BY MR. ROBERTSON:

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1 Q. Can you take a look, do you have Mr. Federighi's declaration  
2 there, Doctor?

3 A. I do. Let me apologize to the jury that there's so much  
4 information that I've divided it into four books. So I'll be  
5 switching back and forth among the books.

6 Q. That's fine. Doctor, take your time to find whatever you  
7 need to find because we'll be fumbling up here as well.

8 Are you with me, Doctor?

9 A. Well, we've had our first blow-out of the binder here.

10 Okay. I apologize for that. Yes, I'm ready, sir.

11 Q. Page 4 of that document, sir, specifically paragraph 18, what  
12 did -- it's the Federighi declaration, and did you -- can you tell  
13 us what Mr. Federighi represented in that first sentence of  
14 paragraph 18 the Ariba Buyer System is?

15 MR. LAVELLE: Objection.

16 THE WITNESS: "Ariba Buyer" --

17 THE COURT: What's the basis for the objection? I mean,  
18 the whole point we're doing this is because you objected to the  
19 leading manner of Mr. Robertson's questions. My understanding of  
20 the line of questioning that you objected to was simply laying at  
21 this point the foundation upon which Dr. Weaver is opining. He  
22 was going through just seriatim did you look at this deposition,  
23 did you look at that, did you look at that. That was in some  
24 respects leading.

25 You objected, I sustained the objection, but that's all

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1 Q. Do you understand that -- Mr. Federighi's position with  
2 Ariba?

3 A. Yes.

4 Q. What is that?

5 A. It's chief technical officer.

6 Q. All right. Now, in his declaration, did he make certain  
7 admissions with respect to the features and functionality of the  
8 Ariba Buyer System?

9 A. Yes.

10 Q. Okay. And what did he state the Ariba Buyer System was in  
11 the first sentence of paragraph 18 of his declaration, signed  
12 under the pains and penalties of perjury?

13 A. "Ariba Buyer is an electronic procurement software product  
14 that allows a company to automate the purchasing of products from  
15 various suppliers."

16 Q. What does Mr. Federighi state in the second sentence of  
17 paragraph 18?

18 A. "Ariba Buyer interacts with a service provided by Ariba  
19 called the Ariba Supplier Network."

20 Q. Based on your review of these documents and deposition  
21 testimony, do you have an understanding as to what the Ariba  
22 Supplier Network is?

23 A. Yes.

24 Q. Can you tell the jury what your understanding is?

25 A. This is a communications vehicle that is used many different